



(Billing Code 5001-06)

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 217

RIN 0750-AI37

**Defense Federal Acquisition Regulation Supplement: Multiyear
Contracts—Statutory References and Cancellation Ceiling
Threshold (DFARS Case 2014-D019)**

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement to update the cancellation ceiling threshold for multiyear contracts and to correct statutory references.

DATES: Comment date: Comments on the proposed rule should be submitted in writing to the address shown below on or before **[Insert date 60 days after date of publication in the FEDERAL REGISTER]**, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2014-D019, using any of the following methods:

- o Regulations.gov: <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by entering "DFARS Case 2014-D019" under the heading "Enter keyword or ID" and

selecting "Search." Select the link "Submit a Comment" that corresponds with "DFARS Case 2014-D019." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "DFARS Case 2014-D019" on your attached document.

- o E-mail: osd.dfars@mail.mil. Include DFARS Case 2014-D019 in the subject line of the message.

- o Fax: 571-372-6094.

- o Mail: Defense Acquisition Regulations System, Attn: Ms. Jennifer Hawes, OUSD(AT&L)DPAP/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301-3060.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check www.regulations.gov, approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Jennifer Hawes, Defense Acquisition Regulations System, OUSD(AT&L)DPAP/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301-3060. Telephone 571-372-6115.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is proposing to revise the DFARS regarding multiyear contracts to correct statutory references and to update the cancellation ceiling threshold at DFARS 217.170(e)(1)(iv) and (e)(5) for consistency with the Federal Acquisition Regulation (FAR). Currently, DFARS 217.170(e)(1)(iv) requires DoD to provide notification to the congressional defense committees at least 30 days before entering into a multiyear contract that includes a cancellation ceiling in excess of \$100 million. DoD issued a final rule (75 FR 45072), effective October 1, 2010, to implement the requirements of section 807 of the National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108-375) by escalating acquisition-related thresholds throughout the DFARS; however, the increase to the cancellation ceiling threshold at DFARS 217.170(e)(1)(iv) and (e)(5) was not included in the rule, resulting in a conflict with the cancellation ceiling threshold of \$125 million identified at FAR 17.108(b).

II. Discussion and Analysis

The rule proposes to amend DFARS 217.170(e)(1)(iv) and (e)(5), redesignating paragraph (e) as paragraph (d), and to increase the cancellation ceiling threshold from \$100 million to \$125 million to ensure consistency with the FAR. This rule also corrects references to 10 U.S.C. 2306b, 10 U.S.C. 2306c, and section 8008a of Pub. L. 105-56 throughout DFARS subpart 217.1

and makes the following corrections regarding multiyear contracts for supplies:

- The language at DFARS 217.170(b), under the "General" section, applies only to the acquisition of property in accordance with 10 U.S.C. 2306b. This language is moved to a new paragraph (j) under DFARS 217.172, Multiyear contracts for supplies.

- The current language at 217.172(c) states that multiyear contracts in amounts exceeding \$500 million must be specifically authorized by law and that a multiyear supply contract may be authorized by an appropriations act or a law other than an appropriations act. However, the language at 10 U.S.C. 2306b(i)(3), which addresses the acquisition of property, states that a multiyear contract in excess of \$500 million must be specifically authorized by law in an act other than an appropriations act. In addition, 10 U.S.C. 2306b(1)(3) states that the head of the agency may not initiate a multiyear procurement contract for any system (or component thereof) if the value of the multiyear contract would exceed \$500 million unless authority for the contract is specifically provided in an appropriations act. The language at 217.172(c) is corrected and a new paragraph regarding multiyear procurement contracts is added.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

This rule proposes to amend the DFARS regarding multiyear contracts to ensure consistency with the FAR and the underlying statutes.

The objective of this rule is to increase the cancellation ceiling threshold at DFARS 217.170(e)(1)(iv) from \$100 million

to \$125 million to ensure consistency with the threshold at FAR 17.108(b). In addition, this rule will correct references to 10 U.S.C. 2306b, 10 U.S.C. 2306c, and section 8008(a) of Pub. L. 105-56 throughout DFARS subpart 217.1 and make the following clarifications: (1) a multiyear contract for supplies in excess of \$500 million must be specifically authorized by law in an act other than an appropriations act in accordance with 10 U.S.C. 2306b(i)(3); and, (2) a multiyear procurement contract for any system (or component thereof) with a value greater than \$500 million must be specifically authorized in an appropriations act 10 U.S.C. 2306b(i)(3).

Small businesses will not be affected by this rule. This rule will impact procedures and authorities internal to the Government for multiyear contracts that require a cancellation ceiling up to \$125 million or are valued in excess of \$500 million and are for supplies.

This rule does not add any new information collection requirements. The rule does not duplicate, overlap, or conflict with any other Federal rules. No alternatives were identified that will accomplish the objectives of the rule.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2014-D019), in correspondence.

V. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 217

Government procurement.

Manuel Quinones,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 217 is proposed to be amended as follows:

PART 217—SPECIAL CONTACTING METHODS

1. The authority citation for 48 CFR part 217 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

217.103 [Amended]

2. Amend section 217.103, in the definition for "Military installation," by removing "(10 U.S.C. 2801(c)(2))" and adding "(10 U.S.C. 2801(c)(4))" in its place.

3. Amend section 217.170 by—

a. Removing paragraph (b);

b. Redesignating paragraphs (c), (d), and (e) as paragraphs (b) (c), and (d), respectively;

c. Revising newly redesignated paragraphs (d)(1)(ii), (iii), and (iv); and

d. In newly redesignated paragraph (d)(5), removing "\$100 million" and adding "\$125 million" in its place.

The revisions read as follows:

217.170 General.

* * * * *

(d)(1)* * *

(ii) Employ economic order quantity procurement in excess of \$20 million in any one year of the contract (see 10 U.S.C. 2306b(1)(1)(B)(i)(I) and section 8008(a) of Pub. L. 105-56 and similar sections in subsequent DoD appropriations acts);

(iii) Involve a contract for advance procurement leading to a multiyear contract that employs economic order quantity procurement in excess of \$20 million in any one year (see 10 U.S.C. 2306b(1)(1)(B)(ii) and section 8008(a) of Pub. L. 105-56 and similar sections in subsequent DoD appropriations acts); or

(iv) Include a cancellation ceiling in excess of \$125 million (see 10 U.S.C. 2306c(d)(4) and 10 U.S.C. 2306b(g)(1)).

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217.171 [Amended]

4. Amend section 217.171 by—

- a. In the introductory text of paragraph (a), removing "(10 U.S.C. 2306c)" and adding "(10 U.S.C. 2306c(a))" in its place;
- b. In paragraph (a)(5)(iii), adding "(10 U.S.C. 2306c(b))" at the end of the sentence, before the period;
- c. In paragraph (b)(3), adding "(10 U.S.C. 2306c(c))" at the end of the sentence, before the period;
- d. In paragraph (c)(3), adding "(10 U.S.C. 2306c(a))" at the end of the sentence, before the period; and
- e. In paragraph (d), removing "(10 U.S.C. 2306(c))" and adding "(10 U.S.C. 2306c(d)(2))" in its place.

5. Amend section 217.172 by—

- a. Revising paragraph (c);
- b. Redesignating paragraphs (d) through (h) as paragraphs (e) through (i), respectively;
- c. Adding a new paragraph (d);
- d. In newly redesignated paragraph (f)(1), adding a parenthesis to close the parenthetical phrase "(when entered into or extended)" and removing "(10 U.S.C. 2306b(1)(5))" and adding "(10 U.S.C. 2306b(1)(5))" in its place.

- e. In newly redesignated paragraph (f) (2), removing the parenthetical reference "(10 U.S.C. 2306b(a) (1) (7))";
- f. In newly redesignated paragraph (g) (1), adding the parenthetical reference "(10 U.S.C. 2306b(h) (1))" before the semicolon;
- g. In newly redesignated paragraph (g) (2), adding the parenthetical reference "(10 U.S.C. 2306b(h) (2))" at the end of the first sentence, before the period;
- h. In newly redesignated paragraph (h) (2) (vii)–
- i. Adding the parenthetical reference "(10 U.S.C. 2306b(i) (1) (G))" at the end of the first sentence before the period, and removing it from the end of the second sentence; and
- ii. Removing "USD(C) (P/B)" and adding "OUSD(C) (P/B)" in its place.
- i. In newly redesignated paragraph (h) (2) (viii) introductory text, removing "USD(C) (P/B)" and adding "OUSD(C) (P/B)" in its place.
- j. In newly redesignated paragraph (h) (8) introductory text, removing the parenthetical reference "(10 U.S.C. 2306b(i) (2))"; and
- k. Adding a new paragraph (j).

The revisions and additions read as follows:

217.172 Multiyear contracts for supplies.

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(c) Multiyear contracts in amounts exceeding \$500 million must be specifically authorized by law in an act other than an appropriations act (10 U.S.C. 2306b(i)(3)).

(d) The head of an agency may not initiate a multiyear procurement contract for any system (or component thereof) if the value of the multiyear contract would exceed \$500 million unless authority for the contract is specifically provided in an appropriations act (10 U.S.C. 2306b(1)(3)).

* * * * *

(j) Any requests for increased funding or reprogramming for procurement of a major system under a multiyear contract shall be accompanied by an explanation of how the request for increased funding affects the determinations made by the Secretary of Defense under 217.172(g)(2) (10 U.S.C. 2306b(m)).